

Appln. No.: 10/601,912
Amendment dated August 2, 2005
Reply to Office Action of May 2, 2005

REMARKS

The Examiner is once again thanked for his consideration of the present application.

Applicants have made a non-narrowing amendment to Claim 1. Full support for the amended language is found in the application on page 10, lines 30-31.

The obviousness-type double patenting rejection is not well founded. The Vianen reference, EP 404,227, noted by the applicant on page 2, line 11 of the specification, discloses extrusion techniques for the manufacture of polydextrose. Claim 1 of the Antim '418 patent broadly specifies catalytic hydrogenation of a mixture of malto-oligosaccharide species and derivatization of the hydrogenated malto-oligosaccharide mixture. Looking only at the claims of the '418 patent, and reading these claims for their teachings, there is no teaching or suggestion to modify the subject matter disclosed therein by the polymerization of glucose, maltose or maltotriose of Vianen. Vianen is directed towards the preparation of polydextrose by polymerization in an extruder. There is no teaching of a 1-4 linked material created upon polymerization, nor is there any teaching of a derivatized material. To obtain a double patenting rejection based on the '418 patent plus Vianen, the examiner would have to show that this combination teaches the invention claimed in the present application. The combination of Vianen and the '418 patent does not arrive at the present invention. Vianen teaches that low molecular weight saccharides in an extruder will polymerize to form polydextrose, a 1-6 linked species. The '418 patent claims teach the hydrogenation of similar lower molecular weight sugars followed by the derivatization of the hydrogenated sugars, not polymerization. The teaching of these claims and the Vianen reference are inapposite and incompatible. There simply is no motivation to combine the derivatization of the '418 patent with the polymerization of the Vianen reference. The obviousness-type double patenting rejection is not warranted.

Applicants respectfully traverse the Section 103 rejection on the grounds that the '418 patent cannot be used as prior art under 35 U.S.C. 103 against the present application. U.S.

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Patent 6,720,418 was first published as US 2002/0132310 on September 19, 2002. The instant application was filed on June 23, 2003, less than one year after the '418 patent application was published. The instant application claims priority to the provisional application number 60/390,570 filed on June 21, 2002, three months prior to the publication of the '418 patent. On these bases, the '418 patent is not prior art to the instant application.

As noted in MPEP Section 804, "For applications filed on or after November 29, 1999, rejections under 35 U.S.C. 102(e)/103(a) should not be made or maintained if the applicant provides evidence that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person." Applicants presented such evidence in the form of a Declaration in the response to the last Office Action. Because the '418 patent and instant application were commonly owned and/or subject to an obligation of assignment at the time the instant invention was made, the Section 103(a) rejection cannot be maintained.

Conclusion

Allowance is respectfully solicited.

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Respectfully submitted,

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